

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MATTHEW FISHER,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 14-cv-13516

Honorable Laurie J. Michelson

Magistrate Judge Elizabeth A. Stafford

**ORDER DENYING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT [17],
GRANTING IN PART AND DENYING IN PART PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT [14], AND REMANDING FOR FURTHER PROCEEDINGS**

Before the Court is Magistrate Judge Elizabeth A. Stafford’s Report and Recommendation. (Dkt. 21.) At the conclusion of her Report and Recommendation, Magistrate Judge Stafford notified the parties that they were required to file any objections within fourteen days of service, as provided in Federal Rule of Civil Procedure 72(b)(2) and Eastern District of Michigan Local Rule 72.1(d), and that “[f]ailure to file specific objections constitutes a waiver of any further right of appeal.” (Report & Recommendation at 16.) No objections were filed.

In *United States v. Walters*, 638 F.2d 947, 949–50 (6th Cir. 1981), the Sixth Circuit established a rule of procedural default, holding that “a party shall file objections with the district court or else waive right to appeal.” In *Thomas v. Arn*, 474 U.S. 140, 144 (1985), the Supreme Court held that this rule violates neither the Federal Magistrates Act nor the federal constitution. Pursuant to *Walters* and *Thomas*, Fisher’s “failure to object is a procedural default, waiving his right for this Court to review the report and recommendation.” See *Johnson v. Clifton*, No. 13-CV-14922-LJM, 2015 WL 4770105, at *2 (E.D. Mich. Aug. 13, 2015).

The Court therefore finds that Fisher has waived further review of the Report and accepts the Magistrate Judge's recommended disposition. It follows that Defendant's Motion for Summary Judgment (Dkt. 17) is DENIED and Plaintiff's Motion for Summary Judgment (Dkt. 14) is GRANTED IN PART and DENIED IN PART. The Commissioner's decision is REVERSED and this matter shall be REMANDED for further consideration consistent with the Report and Recommendation, pursuant to sentence four of 42 U.S.C. § 405(g).

SO ORDERED.

s/Laurie J. Michelson
LAURIE J. MICHELSON
UNITED STATES DISTRICT JUDGE

Dated: November 30, 2015

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served on the attorneys and/or parties of record by electronic means or U.S. Mail on November 30, 2015.

s/Jane Johnson
Case Manager to
Honorable Laurie J. Michelson